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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,016	12/20/2001	Ralph H. Johnson	15436.436.2	6091
22913	7590	10/01/2004	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			NGUYEN, DUNG T	
			ART UNIT	PAPER NUMBER
			2828	
DATE MAILED: 10/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,016

Applicant(s)

JOHNSON, RALPH H.

Examiner

Dung (Michael) T Nguyen

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9-13, 15-19, 21-25, 27, 29, and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US6046096) in view of Barron et al. (US6008525). Ouchi shows an active region comprising one 5nm thick InGaAsSbN quantum well (col.9, 1.31-40) comprising 1% N (col.2, 1.40-41) and AlGaAs barrier layers (col.1, 1.35-36 and col.7, 1.14-65). Ouchi lacks AlGaAs confinement layers. Barron teach AlGaAs confinement layers (col.5, 1.28). For the benefit of the VCSEL, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Ouchi the AlGaAs confinement layers as taught by Barron.

Claims 2, 8, 14, 20, 26, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouchi (US6046096) in view of Barron et al. (US6008525) and further in view of Ohkubo (US5832018). Ouchi and Barron disclose all limitations of the claim except for the barrier layers made of GaAsP. Ohkubo teaches the barrier layers made of GaAsP (see abstract). For the benefit of a VCSEL, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Ouchi and Barron the barrier layers made of GaAsP as taught by Ohkubo.

(Please note that the inherency to support the quantum well having a depth of at least 40 meV is the figure 14.3 of the book of Electronic Material Science: For Integrated Circuits in Si and GaAs by James W. Mayer and S.S. Lau, 1990).

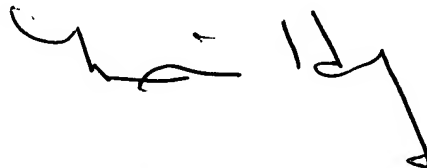
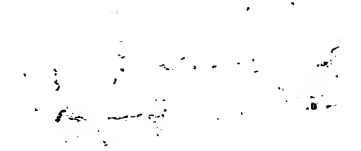
Communication Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung (Michael) T Nguyen whose telephone number is (571) 272-1949. The examiner can normally be reached on 8:30 - 17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Min Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3329.

Michael Dung Nguyen

**MINSUN CH HARVEY
PRIMARY EXAMINER**